

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 63 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

VARSANGBHAI SHANKAR VAGHRI

Versus

COLLECTOR

Appearance:

MS SHALINI MEHTA for MR GIRISH PATEL for Petitioners
MR MA BUKHARI for Respondent No. 1, 3 and 4
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/07/2000

ORAL JUDGEMENT

1. The petitioners in this petition challenge the order dated 29th December, 1989 of the respondent No.4 restraining them from constructing dwelling houses on the

land allotted to them by respondent no.2. The petitioners belong to poor and weaker section of the Vaghri community of the society. They earn their livelihood by doing small manual jobs.

2. It is the case of the petitioners that each of them have been allotted on permanent basis a piece of land admeasuring about 36 sq.mtrs. under an agreement entered in between them and respondent No.2. This agreement has not been challenged by other respondents. The petitioners had built up huts on the waste land near S.T. Depot, Opposite Old Market Yard and were living there for last more than 25 years. The respondent No.2 earlier threatened to demolish the huts of the petitioners forcibly if they do not vacate the same as the Panchayat wanted to construct Shopping Centre on that land. In paragraph no.6 of the Special Civil Application, the petitioners have made a categorical statement that the land in dispute originally belonged to the Government and it was under the control of the Government, but the respondent-Nagar Panchayat informed the petitioners that it has been purchased by the Nagar Panchayat from the Government and it is owned by the Panchayat.

3. The petitioners having apprehension of the demolition of their huts illegally and unauthorisedly by the respondent No.2, they filed a writ petition, being Special Civil Application No.3612 of 1989 in this Court. In this petition, the Collector, Mehsana as well as the State of Gujarat were made parties in addition to the Nagar Panchayat. Before that petition came up for hearing for admission, the respondent-Nagar Panchayat had entered into two separate agreements, one agreement dated 11/12/1989 with the petitioners and another agreement dated 12/12/1989 with the remaining petitioners of the Special Civil Application No.3612 of 1989. Under these agreements, Respondent no.2 agreed to allot 36 sq. mtrs. of land to each of the petitioners of this petition as well as the remaining petitioners of the Special Civil Application No.3612 of 1989 near the outskirts of Village Mansa on permanent basis as and by way of an alternate accommodation for the land, they were occupying near the S.T.Bus Depot. In that agreement, it was also provided that the petitioners shall demolish their huts and shall hand over vacant possession of the land to Respondent No.2-Nagar Panchayat. In terms of this agreement, the matter has been decided accordingly in this Court in the previous litigation. The Advocate of the Nagar Panchayat on instructions from the Chairman of the said Panchayat also made a statement that the Nagar Panchayat would

provide light and water facilities to the petitioners at the new site allotted to them. The possession of the alternate land allotted to the petitioners were taken by them on 12/12/1989. As per their settlement, the petitioners demolished their huts on or about 18th December, 1989 on the land near to the S.T. Bus Depot and gave clear and vacant possession thereof to the Nagar Panchayat. The petitioners started to construct small pakka houses thereon and the construction work of foundation was over. In the mean time, on 27th December, 1989, the officials of the City Survey Superintendent came to the site and told the petitioners to stop the construction work on the said land and if they failed to comply with their instructions, they would be prosecuted. Then, the petitioners stopped the construction. On 29/12/1989, respondent No.4 issued the impugned order restraining the petitioners from carrying out any construction work on the land. Hence, this Special Civil Application.

4. On 9th January, 1990, this petition was placed in the Court for preliminary hearing and leave to amend the petition has been granted. The matter was admitted and interim relief has also been granted in terms which reads as under :

" Ad-interim relief in terms of paragraph 18(i) on condition that in case the petitioners lose in the petition, they shall not be entitled to claim any right or interest whatsoever in the super-structure and shall not be entitled to claim any compensation for the super structure in case the same is ordered to be removed or permitted to be removed by the Court. "

4. The learned counsel for the petitioners state that in pursuance of the Court's order aforesaid, all the petitioners have completed the construction of their houses.

5. None of the respondents has filed the reply to the Special Civil Application and the averments made by the petitioners in the Special Civil Application stand uncontroverted.

6. In the Special Civil Application No.3612 of 1989, the Collector, Mehsana and the State of Gujarat were parties. This has been very specifically mentioned by the petitioners in paragraph no.7 of the Special Civil Application. These averments have not been controverted and the same are to be taken to be admitted by the respondents. Otherwise also, I find from the order of

this Court dated 15th December, 1989 in the Special Civil Application No.3612 of 1989, Annexure-B, at Page No.18, that the Collector, Mehsana and others were parties to that petition.

7. In the Special Civil Application No. 3612 of 1989, notices were issued to the respondents i.e. Collector, Mehsana and State of Gujarat. This has clearly borne out from the order of the Court dated 15th December, 1989 made while disposing of the petition as withdrawn. The notice was discharged. This is also not in dispute and it is also clear from the order of this Court aforesaid that the Nagar Panchayat have entered into agreements dated 11/12/1989 and 12/12/1989 with the petitioners under which it is agreed to allot alternate plots of land admeasuring 36 sq. mtrs in lieu of the land occupied by the petitioners and on which, huts have been erected. In pursuance to the agreements, the petitioners have been allotted the land in dispute by the Nagar Panchayat is also an another fact on which, there is no dispute. It is also not in dispute that the land which the petitioners were occupying near the S.T. Bus Depot has been vacated by them and the possession thereof has been handed over to the Nagar Panchayat. It is also admitted fact as reply to the petition has not been filed by any of the respondents that on the land allotted to the petitioners, the petitioners have partly raised construction and under the interim order of this Court, later on have fully constructed their houses.

9. The learned counsel for the State contended that the land in dispute belong to the State Government and the Nagar Panchayat has no authority to allot this land to the petitioners. The respondent No.4 has rightly taken action to restrain the petitioners from raising the construction thereon.

10. I do not find any merits in any of these contentions of the learned counsel for the State of Gujarat and its Officers. The respondents have not filed any reply to the Special Civil Application and the averments made by the petitioners in paragraph no.6 of the Special Civil Application stand uncontroverted. By not filing the reply to the Special Civil Application, the respondent-State of Gujarat accepted that the Nagar Panchayat has purchased this land from the Government and it is owned by it. Otherwise also, the respondent-State of Gujarat and its Officers have failed to produce any material on the record to establish that the land in question belongs to the State of Gujarat.

11. Not only this, the State of Gujarat and the Collector, Mehsana were parties to the petition filed by the petitioners earlier. They have not objected to the agreements which have been entered into between the petitioners and the Nagar Panchayat and to the order which has been made by this Court. Not only this, at no point of time, till day the respondent-State of Gujarat and its Officers have taken any action for cancellation of the agreements. It is also not the case of the respondent-State of Gujarat and its Officers that against the order of this Court dated 18th December, 1989, they have filed Letters Patent Appeal, hence, that judgement has attained finality. Once, the State of Gujarat and the Collector, Mehsana accepted the agreements entered into between the petitioners and the Nagar Panchayat, its Officers have no jurisdiction or competence or authority to restrain the petitioners from raising the construction on the land. In facts of this case, the action of respondent no.4 to restrain the petitioners from raising the construction under the impugned order dated 29th December, 1989, Annexure-C, is wholly arbitrary, unjustified and unreasonable. It is a case where in lieu of the land which the petitioners were occupying near the S.T. Bus Depot, this land in dispute has been allotted to them. It may be true that the petitioners would have been occupying the land near the S.T. Bus Depot unauthorisedly, but the Nagar Panchayat when agreed to give them an alternate land, the agreements have been entered into and same were also given effect to, I fail to see any justification in the action of respondent No. 4 to pass an order restraining the petitioners from raising construction on the land. It is not unknown that even to the trespassers on the Government or Nagar Panchayat land, the Nagar Panchayat or Government have allotted alternate land for their rehabilitation. Here, the land which the petitioners were occupying near the S.T. Bus Depot, have been vacated by them and now, it is most arbitrary and unreasonable on the part of the State of Gujarat and its Officers not to permit them to raise the construction on the land which has been allotted to them by the Nagar Panchayat. The action of respondent No. 4 is wholly unjustified, unreasonable and as such, it cannot be allowed to stand.

12. As a result of the aforesaid discussion, this Special Civil Application succeeds and the same is allowed and the order dated 29th December, 1989 of the respondent no.4, Annexure-C, is hereby quashed and set

aside. Rule is made absolute accordingly. The petitioners are poor persons and members of the weaker class of the society and are harassed by the officers of the State. But for the order dated 29th December, 19989, there would not have been any occasion for the petitioners to come to this Court. A litigation in the Court costs heavily to the litigant. These poor persons, with great difficulties, would have arranged the money for fees of the Advocate or other expenses of filing of the Special Civil Application. Their difficulties are the matter of realisation. This is a fit case where respondents are to be directed to pay the costs of this litigation to the petitioners. It is wholly unjustified on the part of the petitioners to join the Nagar Panchayat as a respondent in the matter. In fact, the Nagar Panchayat has unnecessarily been joined as a party to this petition by the petitioners. The litigant has to take all care to see that unnecessarily a person may not be joined as party to the petition. However, nobody has put appearance for respondent no.2. So, nothing more to be said in this respect. The respondent No. 3, State of Gujarat, is directed to pay Rs.500/- as the costs of this petition to the each petitioners.

(S.K. Keshote, J.)
(kamlesh)